

Experts Say Krasner Will Win the Impeachment Fight—the Question Is 'How?' | The Legal Intelligencer

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Experts agree: Philadelphia District Attorney Larry Krasner won't be booted from his post any time soon.

What's less clear is what his path out of the state impeachment process will look like.

“Everything about this is unprecedented,” said Craig Green, a professor at Temple University Beasley School of Law. “The only thing we know for sure is there will be no conviction in the Senate.”

Green said state Republicans lack the two-thirds Senate majority required to convict Krasner in what he said is expected to be a starkly partisan vote. But Green noted that the Senate may not even be the body to ultimately put an end to the impeachment proceedings.

Green and others said it is possible that the House, the Commonwealth or the state Supreme courts could intervene.

The House on Nov. 16 voted 107-85, almost entirely along party lines, to impeach Krasner for “misbehavior in office,” but come January, Republicans are set to lose the majority that made that vote possible.

Green said that power shift will create a situation in which the House does not support the articles of impeachment it previously presented to the Senate. And because the circumstances are so unusual, he said, there is no clear law as to whether the new House could take steps to work against or rescind the impeachment.

“The basic procedural features of this impeachment are unbelievable,” Green said.

What Happens at Trial?

The murky protocol for impeachment in Pennsylvania extends to the Senate proceedings, as well.

Krasner's trial is scheduled to begin Jan. 18, with the Senate [convening](#) Tuesday and Wednesday in two additional session days in order to advance the process before the end of the year.

On Tuesday, the Senate approved a resolution establishing the rules of practice and procedure that will dictate how the trial will unfold. The 15-page [resolution](#) provides guidance on issues such as the timing of the trial, the Senate’s power in the proceedings, and the roles of floor managers and counsel.

Rep. Jared Solomon, D-Philadelphia, who was [appointed](#) to serve as a floor manager for the trial, said Monday that before the rule’s approval questions, such as whether there would be a pretrial conference or depositions and what evidence would be allowed, were still up in the air.

Solomon declined to comment on Krasner’s defense strategy, but said his own approach will be “defending the laws of Pennsylvania and upholding the PA Constitution and ensuring that the institutions that are important to Pennsylvanians are respected and the rules are followed.”

A spokesperson for the DA’s Office declined to comment, and attorneys with Hangle Aronchick Segal Pudlin & Schiller representing Krasner in a separate but related case did not respond to requests for comment.

Krasner’s Defense Strategy

According to constitutional law experts not involved in the matter, Krasner’s defense strategy is likely to take aim at the idea that his conduct in office amounted to “misbehavior in office.”

Bruce Ledewitz, a professor at Duquesne University Thomas R. Kline School of Law, said Krasner likely would not dispute the prosecution’s facts—many of which center on Krasner’s progressive policies.

“He may defend on the merits, but I doubt that he will,” Ledewitz said.

Instead, Ledewitz said, Krasner could make a strong argument that the charges against him do not meet the standard for impeachment.

Krasner has already posed such arguments to the Commonwealth Court in his related suit challenging a subpoena from a House committee investigating his office.

In a petition for review predating the House's impeachment vote, the District Attorney's Office argued, "The select committee's investigation of District Attorney Krasner is not based on any alleged 'misbehavior' in office, as the courts have interpreted that term. The select committee's investigation of District Attorney Krasner is, at most, based on policy differences."

Temple Law's Green said Krasner may also raise another argument from the subpoena dispute that as a district attorney he is not a "civil officer" subject to impeachment by the legislature.

Court Intervention

To make a case questioning the legality of the proceedings, Krasner may turn to the judiciary, Ledewitz said.

According to Ledewitz, a challenge to the impeachment's constitutionality could very well succeed. Unlike federal courts, he said, Pennsylvania courts have established that they may intervene with impeachments. Ledewitz said, given the divisive rhetoric surrounding the efforts to remove Krasner from office, "the courts are very likely to see this as politics, not as a misbehavior in office."

But others are skeptical that the judiciary would get involved.

Quinn Yeargain, assistant professor at Widener University Commonwealth School of Law, said, "For the most part, with some exceptions, it's not the case that courts overwhelmingly involve themselves in impeachment proceedings."

They said Krasner will likely argue his behaviors didn't amount to misbehavior in office, but "arguing over the nuances of what misbehavior in office means doesn't really accomplish all that much."

Yeargain said the legislature holds the authority to determine what constitutes misbehavior in office, making the question something courts are reluctant to touch.

Green, too, said courts historically leave matters of impeachment to the legislature. He said Krasner's impeachment proceedings are far more likely to end with House intervention or a Senate vote. "I don't expect a court ruling at this point to become crucial, although there are surprises," he said.

The precedent for impeachments in Pennsylvania is scant, Green explained, which makes the path forward unclear.

Solomon, the floor manager, claimed that lack of precedent can be seen as a good thing.

"The reason," he said, "is that we do not take up impeachment of civil officers frequently, nor should we, and when we do we need to make sure we are strongly within the left and right limits of our constitution."